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CENTRAL DISTRICT OF CALIF.  
SANTA ANA CALIF.

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4  
5 Attorneys For Plaintiff  
DARTY CRONIN

6  
7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

9  
10  
11 DARTY CRONIN, Case No. SACV 08-01297DOC (MLGx)  
12 Plaintiff,  
13 v.  
14  
15 MONEX DEPOSIT COMPANY, a FIRST AMENDED COMPLAINT  
16 California limited Partnership,  
17 LOUIS CARABINI, MICHAEL JURY DEMANDED  
CARABINI, MIKE MARONEY, DAVID  
GALA, DAN J. C. WALES, AND DOES  
1 - 200  
19 Defendants.  
20

1. Fraud Under Commodity Futures  
Modernization Act of 2000  
2. Common Law Fraud  
3. Breach of Contract  
4. Negligent Misrepresentation  
5. Constructive Fraud  
6. Common Count

21  
22  
23  
24 Plaintiff alleges as follows:  
25  
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27  
28

**JURISDICTION**

29  
30 1. The jurisdiction of this Court over the subject matter of  
31 this action is predicated on 28 U.S.C. § 1337 and 7 U.S.C. § 1, et  
32 seq.  
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CV-5  
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## VENUE

2. Plaintiff is informed and believes, and thereon alleges, that all Defendants reside in this District. In addition, the claim arose in this District.

## **PARTY ALLEGATIONS**

3. Plaintiff DARTY CRONIN is an individual residing in the County of Los Angeles, State of California ("CRONIN").

4. Plaintiff is informed and believes, and thereon alleges, that Defendant MONEX DEPOSIT COMPANY ("MONEX") is a California limited partnership with its principle place of business in Orange County, California.

5. Plaintiff is informed and believes, and thereon alleges, that Defendant LOUIS CARABINI ("L. CARABINI") is an individual residing in Orange County, California.

6. Plaintiff is informed and believes, and thereon alleges, that Defendant MICHAEL CARABINI ("M. CARABINI") is an individual residing in Orange County, California.

7. Plaintiff is informed and believes, and thereon alleges, that Defendant MIKE MARONEY ("MARONEY") is an individual residing in Orange County, California.

1       8. Plaintiff is informed and believes, and thereon alleges,  
2 that Defendant DAVID GALA ("GALA") is an individual residing in  
3 Orange County, California.

5       9. Plaintiff is informed and believes, and thereon alleges,  
6 that Defendant DAN J. C. WALES ("WALES") is an individual residing  
7 in Orange County, California.

9       10. Plaintiff is not currently aware of the names and/or  
10 capacities of the Defendants sued herein as DOES 1 through 200,  
11 inclusive, and therefore sue said Defendants by such fictitious  
12 names. Plaintiff is informed and believes that said Defendants are  
13 responsible in some manner, or culpable for some reason, for  
14 Plaintiff's damages and the acts alleged herein. Plaintiff will  
15 amend this Complaint to allege the true names and capacities of  
16 these Defendants when the same are ascertained. Defendants MONEX,  
17 L. CARABINI, M. CARABINI, MARONEY, GALA, WALES, and DOES 1 through  
18 200, inclusive, shall be collectively referred to herein as  
19 "Defendants".

21       11. Plaintiff is informed and believes that at all times  
22 mentioned herein, each of the Defendants sued herein was an agent,  
23 principal, representative, employer, or employee of each of the  
24 other Defendants acting within the purpose and scope of such  
25 agency, representation or employment, and that each Defendant  
26 directed, was aware of, acted upon, ratified, and/or accepted the  
27 benefits of the acts and representations of each of the other  
28 Defendants. In addition, Plaintiff is informed and believes that

1 Defendants entered a conspiracy with one another to commit the acts  
2 alleged herein below as more fully described herein below.  
3  
4

#### **INTRODUCTORY ALLEGATIONS**

5  
6 12. Plaintiff is informed and believes, and thereon alleges,  
7 that in or before June of 2007, Defendants MONEX, L. CARABINI, M.  
8 CARABINI, MARONEY, GALA, and WALES and Does 1 through 200, entered  
9 into a conspiracy to engage in the silvers futures market, without  
10 becoming members of a commission-designated board of trade as  
11 required by Federal law, and with the intent to divest investors of  
12 their monies for Defendants' personal gain by managing investment  
13 accounts for futures contracts in a manner calculated to cause  
14 their investors to lose money rather than to help investors realize  
15 gains. Plaintiff is further informed and believes, and thereon  
16 alleges, that in addition to seeking to have the benefits  
17 associated with clientele that were paying fees on transactions,  
18 and in addition to seeking to divorce their clientele from their  
19 money, that Defendants also devised a scheme pursuant to which they  
20 could leverage the monies invested by their clientele to generate  
21 profits of their own, including the profits their clientele would  
22 otherwise have realized. Plaintiff is further informed and  
23 believes, and thereon alleges, that at all relevant times  
24 Defendants were in need of substantial cash influx into MONEX by  
25 reason of the fact that at all relevant times the Internal Revenue  
26 Service was pursuing MONEX for over \$378,000,000 in unpaid taxes.  
27 Plaintiff is informed and believes, and thereon alleges, that  
28 Defendants, and each of them, undertook the acts described herein

1 in furtherance of said conspiracy.

2

3 13. MONEX advertises itself to be a purchaser and seller of  
4 precious metals. Plaintiff is informed and believes that this  
5 aspect of MONEX' business is simply a front to hide the unlawful  
6 and fraudulent activities that are described in this Complaint and  
7 to locate members of the general public that can be persuaded to  
8 invest in silver futures contracts.

9

10 14. In or about June of 2007, CRONIN contracted to purchase  
11 precious metals (gold and silver) from MONEX. CRONIN was introduced  
12 to MONEX by one of its account representatives, Sherri Boland  
13 ("Boland"). Plaintiff is informed and believes that he signed a  
14 written contract with MONEX relating to standard purchases of  
15 precious metals from MONEX and standard sales of precious metals to  
16 MONEX, though Plaintiff does not recall doing so. As explained  
17 below, said contract, if it exists, is not at issue in this  
18 litigation. In the course of purchasing precious metals from MONEX,  
19 Boland became CRONIN's MONEX account representative. MONEX  
20 describes its account representatives as being trained and  
21 experienced professionals in the precious metals market whose  
22 function is to provide investment strategies to their clientele.  
23 MONEX describes itself as being one of the most experienced and  
24 expert firms in the precious metals market.

25

26 15. In or about June, 2007, in the course of CRONIN's  
27 making of some standard purchases of precious metals from MONEX,  
28 Defendants learned that CRONIN had significant wealth and was of

1 the class of clientele that Defendants desired to target as a  
2 victim of the fraudulent scheme described herein.  
3

4       16. Accordingly, Defendants initially permitted Boland to  
5 service CRONIN's account for the very reason that she was an honest  
6 individual with no knowledge of Defendants' fraudulent intentions  
7 who was extremely skilled in the precious metals market and whom  
8 Defendants knew would instill trust and confidence in CRONIN and  
9 guide him in the investment of substantial sums in futures  
10 contracts without arousing suspicion as to Defendants' true intent  
11 simply to take such funds from him.  
12

13       17. Plaintiff is informed and believes, and thereon alleges,  
14 that Defendants intentionally suppressed the following material  
15 facts from Sherri Boland so that she would unwittingly act as  
16 Defendants' agent in suppressing material facts from CRONIN and  
17 other MONEX clientele: A) That MONEX was engaged in a futures  
18 contract business that required that it be registered on a  
19 commission-designated board of trade under federal law, B) that the  
20 "short" investment program described below was of a nature that  
21 required registration on a commission based board of trade under  
22 federal law, C) that it was Defendants' actual intent not to assist  
23 their clients to realize profits but was, instead, their intent to  
24 steal their clients' money through fraud, deception, and unlawful  
25 acts, D) that Defendants intended to maneuver "short" transactions  
26 in a manner calculated to cause their clientele to lose money, and  
27 E) that Defendants would utilize their clients' monies procured  
28 through the "short" investment program in a manner so as to realize

1 profits of their own at the expense of their clients, including  
2 profits their clients would otherwise have realized. These  
3 suppressed facts shall hereinafter be referred to as the  
4 "Suppressed Facts".

5  
6 18. Within a short time after CRONIN had made some standard  
7 purchases of precious metals from MONEX, he was advised by Sherri  
8 Boland, about a completely different MONEX program that had nothing  
9 to do with the conventional purchase and sale program that CRONIN  
10 started out with. Defendants represented to CRONIN, through their  
11 unwitting agent, Sherri Boland, that this different program would  
12 permit him to make a profit by selling silver when the price of  
13 silver was declining in the market with the aid of his account  
14 representative. This program was referred to as "going short". It  
15 was represented to CRONIN by Defendants, through Boland, that in a  
16 "short" transaction he would commit to MONEX to sell "borrowed"  
17 silver at a specified price and in a specified quantity and that  
18 under this program MONEX would assure CRONIN that it would arrange  
19 and assure the purchase of the silver at that price through an  
20 undisclosed purchaser and that at any given time in the future that  
21 CRONIN determined to buy the silver to cover the sale MONEX would  
22 produce a seller at the then existing market price. Accordingly, on  
23 a date certain CRONIN could lock in a sales price for silver at the  
24 then prevailing rate in a specified amount, but without having to  
25 cover the sale at that time, and could buy the silver to cover the  
26 sale at a future time of his own choosing at the market rates  
27 prevailing at the time of the election. Thus, if the price of  
28 silver went down after the commitment to sell CRONIN would make a

1 profit based on the "bet" that the price of silver would drop. If  
2 the price of silver increased above the committed sale price CRONIN  
3 could lose money if the market trend did not reverse and decline  
4 once again. CRONIN is informed and believes that Sherri Boland was  
5 authorized by her superiors at MONEX to offer this program to  
6 CRONIN, and to make the foregoing representations regarding it, and  
7 that she was given authority to enter into an oral agreement with  
8 CRONIN with regard to the program and as to each short transaction  
9 (CRONIN is informed and believes that as to each "short"  
10 transaction Boland would have to procure specific authorization  
11 from her superiors to enter such transaction).

12

13 19. The means through which MONEX could permit this program to  
14 operate are unknown to CRONIN as they were never explained to him.  
15 Only the concept that CRONIN could make a profit in a declining  
16 silver market on the terms just described was explained and  
17 represented and that this would ultimately be accomplished by MONEX  
18 guarantying to produce a buyer at the locked in sales price and a  
19 seller of the silver necessary to back CRONIN's prior "sale" from  
20 which CRONIN could purchase the silver to cover the sale at less  
21 than the sales price if the market declined. Plaintiff is informed  
22 and believes that to make this program work MONEX would have to  
23 have offsetting "long" transactions to balance the "short"  
24 transactions and that the "long" offsets were either from  
25 commitments of other MONEX customers or were the commitment of  
26 MONEX itself without the silver bullion to back it up. Indeed,  
27 Plaintiff is informed and believes that with regard to all short  
28 transactions he entered with MONEX pursuant to the oral agreement

1 further described below, that there was no physical transfer of  
2 silver from seller to buyer (and that there was no intent that  
3 actual physical delivery of silver would occur) and that a "short"  
4 transaction was either literally a paper transaction with no silver  
5 to back it or was for all practical purposes strictly a paper  
6 transaction the value of which turned on the outcome of "betting"  
7 on market trends over time rather than in the value of the  
8 commodity in a straight forward purchase and sale.

9  
10 20. In summary, at least the following misrepresentations were  
11 made to CRONIN by Defendants through their unwitting agent Boland:  
12 1) that MONEX was offering CRONIN an opportunity to make a profit  
13 in a declining silver market when they harbored the opposite  
14 intent, 2) that MONEX would provide a sound investment strategy,  
15 designed to make his investments profitable, through the client's  
16 account representative (this statement was true with regard to  
17 Boland but was not true with regard to the intended future account  
18 representative to be assigned to CRONIN under the bait and switch  
19 described below), 3) that MONEX would act consistent with the  
20 terms of the program as outlined above, and 4) that in all respects  
21 Defendants had CRONIN's interests at heart. These  
22 misrepresentations shall hereinafter be referred to as the "Initial  
23 Misrepresentations".

24  
25 21. Based on the Initial Misrepresentations and without  
26 knowledge of the Suppressed Facts, CRONIN decided he wanted to  
27 invest in "short" transactions with MONEX and to enter an agreement  
28 with MONEX to that effect and so advised Sherri Boland. Boland

1 orally agreed to entry of such an agreement on behalf of MONEX,  
2 with approval of her superiors, resulting in the formation of an  
3 oral agreement between MONEX and CRONIN whereunder CRONIN could  
4 invest in "short" transactions. Under existing law, and given the  
5 foregoing facts, "short" transactions are "futures contracts" and,  
6 accordingly, the referenced agreement as to "short" transactions  
7 shall be referenced herein as the "Futures Contract". The terms of  
8 the Futures Contract, express and implied, were as follows: 1)  
9 CRONIN's account would be managed by an account representative who  
10 would formulate and provide to CRONIN an investment strategy --  
11 i.e., whether to take conventional positions in silver or  
12 whether to invest his monies in the "short" transaction format  
13 wherein he could speculate as to whether the price of silver would  
14 drop and profit if it did drop, 2) his account representative would  
15 have CRONIN's best interests at heart, 3) that MONEX, through its  
16 sole efforts outside of the control of CRONIN, would guaranty that  
17 at any point in time that CRONIN decided to make the "purchase" to  
18 offset the "sale" in a "short" transaction there would be a seller  
19 available for CRONIN to buy at the then prevailing market rates  
20 which would then be matched against his sell commitment -- thus  
21 MONEX assured CRONIN that through its efforts CRONIN would be able  
22 to sell high and buy low if the silver market dropped through this  
23 deferred form of transaction, and 4) that CRONIN would go "short"  
24 with the intent of making a profit based on pure speculation as to  
25 fluctuations in the price of silver subject only to the risk that  
26 silver market rates might rise instead of fall. Implied within this  
27 oral agreement was a covenant of good faith and fair dealing  
28 wherein MONEX agreed that it would do nothing to deprive CRONIN of

1 the benefit of his bargain, including by avoiding the making of  
2 statements that were calculated to cause CRONIN to lose money so  
3 that Defendants could enrich themselves. Such terms were applicable  
4 as to all of the specific investments CRONIN would make under the  
5 program. ("Futures Transactions").

6

7 22. Consistent with Defendants' plan to deceive CRONIN, Boland  
8 had CRONIN's interests at heart in managing his account and he  
9 gained trust and confidence in dealing with MONEX as a consequence  
10 of Defendants' permitting Boland to service his account. CRONIN  
11 entered Futures Transactions pursuant to the Futures Contract and  
12 made a profit by following Boland's investment strategy in this  
13 regard. Over time CRONIN invested millions in Futures Transactions.  
14 Plaintiff is informed and believes, and thereon alleges, that  
15 Defendants also permitted Boland to develop other substantial  
16 accounts with clientele that had substantial monies, also with the  
17 intent of building their faith and confidence and investment  
18 outlay, and then terminated Boland on or about July 18, 2008. By  
19 terminating BOLAND Defendants would be free to acquire control over  
20 CRONIN's "short" investments and to persuade him to change those  
21 positions in favor of conventional positions of silver all as  
22 further set forth herein.

23

24 23. Plaintiff is informed and believes that at all relevant  
25 times L. CARABINI and M. CARABINI supervised and controlled the  
26 actions of MARONEY who was the Vice President of MONEX, that as  
27 Vice President MARONEY was involved in management at MONEX and had  
28 been one of the individuals that ultimately supervised Sherri

1 Boland and other MONEX account representatives. On or about July  
2 18, 2008, MARONEY represented to CRONIN, in substance, that Sherri  
3 Boland would no longer be handling CRONIN's account but that CRONIN  
4 should not be concerned because WALES was being assigned to his  
5 account and that WALES was the best account representative that  
6 MONEX had and that he had more expertise, knowledge and  
7 sophistication in silver investments than CRONIN and that CRONIN  
8 could, and should, trust WALES' statements to CRONIN. MARONEY  
9 further represented to CRONIN that WALES knew CRONIN's account and  
10 wanted to take care of it and that WALES got all of the big  
11 accounts like CRONIN's. CRONIN did not know WALES and accepted, as  
12 true, MARONEY's representation. MARONEY also suppressed the fact  
13 that Boland had been terminated by MONEX -- a fact which would  
14 have proved highly relevant to CRONIN given his trust and  
15 confidence in Boland. ("MARONEY Misrepresentations and  
16 Suppression"). Based on MARONEY's Misrepresentations and  
17 Suppression CRONIN determined he would accept WALES as his new  
18 account representative.

19

20 24. In order to assure that CRONIN would change his "short"  
21 positions to the enrichment of Defendants, shortly after becoming  
22 CRONIN's account representative, WALES represented to CRONIN that  
23 if CRONIN followed his advice that he would never have an equity  
24 call and based on MARONEY's representations of WALES' skills CRONIN  
25 believed WALES. Shortly after becoming CRONIN's account  
26 representative WALES represented to CRONIN that the silver market  
27 was going to turn upward and that CRONIN should change his "short"  
28 position and go with a conventional position of silver (sometimes

1 referenced at MONEX as "going long"). When CRONIN questioned WALES  
2 about this WALES reemphasized many times that he knew the price of  
3 silver was going to go up and that he would guaranty CRONIN he  
4 would not lose any money if CRONIN changed his "short" positions  
5 and that he would give him a letter signed by someone else in a  
6 superior position in the company guarantying him he would not lose  
7 money and that by the end of the year the account would be worth 3  
8 or 4 million dollars. ("WALES Misrepresentations"). WALES pressured  
9 CRONIN strongly and CRONIN accepted WALES' representations and  
10 assurances and acted upon them, based on the misrepresentations  
11 described above and his ignorance of the suppressed facts described  
12 above.

13

14 25. By accepting WALES' Misrepresentations, in a few short  
15 weeks CRONIN lost in excess of \$1.3 million of the funds he had  
16 invested and Plaintiff is informed and believes that Defendants  
17 enriched themselves by the same amount. In addition, had he  
18 received sound representations CRONIN would have realized a profit  
19 of \$4 - 5 million on his "short" transactions. Instead, Plaintiff  
20 is informed and believes that Defendants had taken acts that would  
21 permit them to procure that profit instead of CRONIN.

22

23 26. Plaintiff is informed and believes that Defendant GALA  
24 was the sales director over WALES and that the sales team under  
25 WALES was doing poorly at the time that CRONIN was told by WALES to  
26 change his short positions and go long and that one motivation for  
27 the representations of WALES was so that WALES and GALA could make  
28 more money for MONEX and for themselves. Plaintiff is informed

1 and believes that GALA was fully aware of the representations made  
2 by WALES and either instructed WALES to make them or fully approved  
3 of them by reason of the motivation just described.

4

5 27. Plaintiff is informed and believes, and thereon alleges,  
6 that Defendants followed the same or a similar pattern with all of  
7 Sherri Boland's former clientele (representing about a \$21 million  
8 book of business) and that those clientele lost most of their  
9 investments after Boland's termination.

10

11 **FIRST CAUSE OF ACTION**  
12 **FOR FRAUD UNDER COMMODITY**  
13 **FUTURES MODERNIZATION ACT OF 2000**  
14 **7 U.S.C. § 6b**  
15 **(AGAINST ALL DEFENDANTS)**

16

17 28. Plaintiff incorporates herein by reference Paragraphs 1  
18 through 27 of this Complaint as if fully set forth herein.

19

20 29. The Suppressed Facts and the MARONEY suppressed fact, were  
21 material facts of import to CRONIN in his decisions and of which he  
22 was ignorant. These facts were suppressed by Defendants, despite  
23 their obligation to disclose them, with the intent to defraud  
24 CRONIN and with the intent to induce him to act in ignorance  
25 thereof. The Initial Misrepresentations, the MARONEY  
26 Misrepresentations, and the WALES Misrepresentations were made with  
27 the intent to defraud CRONIN and with the intent to induce him to  
28 act thereon and were false and Defendants knew they were false. The

1 true facts were, among others, those reflected in the facts that  
2 were suppressed and the fact that WALES was one of the worst  
3 account representatives at MONEX who did not have CRONIN's interest  
4 at heart, but was instead assigned to the account for the specific  
5 purpose of causing CRONIN to lose his investments and to preclude  
6 him from realizing his profits. Plaintiff is further informed and  
7 believes that WALES did not believe that the price of silver would  
8 increase at the time he so represented and warranted to CRONIN. In  
9 addition, the Futures Contract and all Futures Transactions  
10 emanating therefrom, are contracts for purchase and sale of a  
11 commodity for future delivery within the meaning of 7 U.S.C. § 6(a)  
12 requiring Defendants to comply with the registration requirements  
13 of 7 U.S.C. § 6(a). Defendants entered the Futures Contract and  
14 made the Futures Transactions thereunder in violation of 7 U.S.C.  
15 § 6(a), all pursuant to their conspiracy. Accordingly, the Futures  
16 Contract and all Futures Transactions thereunder are illegal off-  
17 exchange contracts.

18

19 30. CRONIN acted in ignorance of the facts that were suppressed  
20 and believed the representations and justifiably relied thereon.  
21 Had CRONIN known the true facts CRONIN would not have entered into  
22 the Futures Contract and would not have entered the Futures  
23 Transactions and would, instead, have made investments in the  
24 futures market with a legitimate company. Had CRONIN known the true  
25 facts with regard to the MARONEY Misrepresentations and Suppression  
26 and the WALES Misrepresentations he would not have changed his  
27 "short" positions.

28

1       31. Plaintiff is informed and believes that Defendants,  
2 pursuant to their conspiracy, desired that the Futures Contract and  
3 the Futures Transactions appear to be legitimate to CRONIN so as to  
4 gain his trust and confidence with the intent that he would invest  
5 substantial sums in short contracts with the intent of realizing a  
6 large return and then utilized the MARONEY Misrepresentations and  
7 Suppression and the WALES Misrepresentations to cause CRONIN to  
8 change his "short" positions. Plaintiff is informed and believes  
9 that in addition to causing CRONIN to lose in excess of \$1.3  
10 million of the dollars that he had invested, which Plaintiff is  
11 informed and believes enriched Defendants, that Defendants were  
12 also able to enrich themselves with the \$4 - \$5 million dollars in  
13 profits that CRONIN would have realized had he not been persuaded  
14 to change his "short" positions.

15

16       32. The foregoing fraud exercised by Defendants in connection  
17 with the Futures Contract and the Futures Transactions were  
18 violations of 7 U.S.C. § 6b. In addition to their culpability  
19 pursuant to the conspiracy, Defendants are also all responsible for  
20 said violations under 7 U.S.C. § 13c by reason of the fact that  
21 each of the Defendants wilfully aided and abetted each of the other  
22 Defendants in the commission of said violations.

23

24       33. As a proximate result of said violations Defendants have  
25 caused Plaintiff to be damaged in an amount in excess of \$6.3  
26 million and according to proof together with interest thereon at  
27 the legal rate of 10% per annum.

28

## **SECOND CAUSE OF ACTION**

## CALIFORNIA COMMON LAW FRAUD

**(AGAINST ALL DEFENDANTS)**

34. Plaintiff incorporates herein by reference Paragraphs 1 through 31, inclusive, as if fully set forth herein.

35. As a proximate result of said fraud Defendants have caused Plaintiff to be damaged in an amount in excess of \$6.3 million and according to proof together with interest thereon at the legal rate of 10% per annum.

36. In doing the acts alleged herein, and by reason of the facts and circumstances alleged herein, Defendants, and each of them, acted with oppression, fraud, and malice towards Plaintiff, entitling Plaintiff to an award of punitive damages in an amount in excess of \$24 million and according to proof.

### **THIRD CAUSE OF ACTION**

## **BREACH OF CONTRACT**

**(AGAINST ALL DEFENDANTS)**

37. Plaintiff incorporates herein by reference Paragraphs 1 - 31, inclusive, of this Complaint as if fully set forth herein.

38. As alleged above, Plaintiff and Defendant MONEX entered into the Futures Contract and pursuant to that contract entered into various Futures Transactions which were controlled by the same

1 terms set forth in the Futures Contract.

2  
3 39. Plaintiff has performed all obligations required of it  
4 under said contract and said transactions.

5  
6 40. MONEX breached the agreement with Plaintiff pursuant to  
7 the conspiracy alleged above by, among other things, suppressing  
8 the Suppressed Facts and the MARONEY suppressed fact, making the  
9 Initial Misrepresentations, the MARONEY Misrepresentations, and the  
10 WALES Misrepresentations, providing through WALES a purported  
11 account strategy that was intended to fail, providing an account  
12 representative that did not have the experience, knowledge and  
13 sophistication promised, failing to disclose to CRONIN that MONEX  
14 did not want CRONIN to retain or profit from his short positions  
15 and acting consistent with that suppressed intent, and by taking  
16 acts, and making statements and representations, that were  
17 calculated to deprive CRONIN of the benefit of his bargain.

18  
19 41. As a proximate result of said breaches Plaintiff has been  
20 damaged in an amount in excess of \$6.3 million and according to  
21 proof together with interest thereon at the legal rate of 10% per  
22 annum and according to proof.

23  
24 **FOURTH CAUSE OF ACTION**

25 **NEGLIGENT MISREPRESENTATION**  
26 **(AGAINST ALL DEFENDANTS)**

27  
28 42. Plaintiff incorporates herein by reference paragraphs 1

1 through 27 of this Complaint as if fully set forth herein.

2

3 43. Plaintiff alleges, in the alterative, that the MARONEY  
4 Misrepresentations, and the WALES Misrepresentations were made with  
5 the intent to induce CRONIN to act thereon and were false and  
6 Defendants made such representations with no reasonable ground for  
7 believing them to be true. The true facts were those reflected in  
8 the facts that were suppressed and the fact that WALES was one of  
9 the worst account representatives at MONEX who did not have  
10 CRONIN's interest at heart, but was instead assigned to the account  
11 for the specific purpose of causing CRONIN to lose his investments  
12 and to preclude him from realizing his profits. Plaintiff is  
13 further informed and believes that WALES had no reasonable ground  
14 to believe that the price of silver would increase at the time he  
15 so represented and warranted to CRONIN.

16

17 44. CRONIN believed the representations and justifiably relied  
18 thereon. Had CRONIN known the true facts CRONIN would not have  
19 changed his "short" positions.

20

21 45. As a consequence of said misrepresentations and his  
22 reliance thereon Plaintiff lost in excess of \$1.3 million of the  
23 dollars that he had invested and is further informed and believes  
24 that he lost \$4 - \$5 million dollars in profits that he would have  
25 realized had he not been defrauded.

26

27 46. Accordingly, Defendants have caused Plaintiff to be  
28 damaged in an amount in excess of \$6.3 million and according to

1 proof together with interest thereon at the legal rate of 10% per  
2 annum.

3  
4 47. In doing the acts alleged herein Defendants, and each of  
5 them, acted with a wilful or conscious disregard of the rights of  
6 Plaintiff, entitling Plaintiff to punitive damages in an amount in  
7 excess of \$24,000,000 and according to proof.

8  
9 **FIFTH CAUSE OF ACTION**

10 **CONSTRUCTIVE FRAUD**

11 **(AGAINST ALL DEFENDANTS)**

12  
13 48. Plaintiff incorporates by reference paragraphs 1 - 31,  
14 inclusive, of this Complaint as if fully set forth herein.

15  
16 49. By reason of the facts alleged hereinabove, including the  
17 entry of the Futures Contract and the representations of Defendants  
18 to Plaintiff, either a fiduciary relationship or a confidential  
19 relationship in which Plaintiff placed trust and confidence in the  
20 integrity and fidelity of Defendants was formed between Plaintiff  
21 and Defendants.

22  
23 50. By reason of said relationship Defendants, and each of  
24 them, had a duty not to gain any advantage over Plaintiff by  
25 misleading him to his prejudice. Thus, Defendants had an obligation  
26 of full and honest disclosure of all material facts known to  
27 Defendants with regard to the Futures Contract and the Futures  
28 Transactions.

1       51. Defendants breached that duty to Plaintiff's prejudice  
2 through the acts, statements, and suppressions of fact alleged  
3 herein above.

4

5       52. As a proximate result of said constructive fraud,  
6 Defendants have caused Plaintiff to be damaged in an amount in  
7 excess of \$6.3 million and according to proof together with  
8 interest thereon at the legal rate of 10% per annum.

9

10       53. In doing the acts alleged herein, and by reason of the  
11 facts and circumstances alleged herein, Defendants, and each of  
12 them, acted with oppression, fraud, and malice towards Plaintiff  
13 and/or acted with wilful disregard for the rights of Plaintiff,  
14 entitling Plaintiff to an award of punitive damages in an amount in  
15 excess of \$24 million and according to proof.

16

17                   **SIXTH CAUSE OF ACTION**

18

19                   **COMMON COUNT FOR**

20

21                   **MONEY HAD AND RECEIVED**

22

23                   **(AGAINST ALL DEFENDANTS)**

24

25       54. Plaintiff incorporates herein paragraphs 1 through 31 and  
26 53 of this Complaint as if fully set forth herein.

27

28       55. Within the last two years, in Orange County, California,  
Defendants, and each of them, became indebted to Plaintiff in a  
sum, the exact amount of which is currently unknown, but which is  
believed to be in excess of \$6.3 million, and according to proof,

1 for money had and received by Defendants for the use and benefit of  
2 Plaintiff.

3  
4 56. Neither the whole, nor any part, due to Plaintiff by  
5 Defendants, as alleged herein, has been paid, and there is now due,  
6 owing, and unpaid from Defendants, and each of them, to Plaintiff  
7 a sum in excess of \$6.3 million and according to proof together  
8 with interest thereon at the legal rate of 10% per annum and  
9 according to proof.

10  
11 WHEREFORE, Plaintiff prays judgment against all Defendants,  
12 and each of them, as follows:

13  
14 **ON THE FIRST AND THIRD**  
15 **CAUSES OF ACTION**  
16

17 1. For damages in an amount in excess of \$6.3 million  
18 and according to proof, together with interest thereon at the legal  
19 rate of 10% per annum and according to proof.

20  
21 **ON THE SECOND, FOURTH,**  
22 **FIFTH AND SIXTH**  
23 **CAUSES OF ACTION**  
24

25 1. For damages in an amount in excess of \$6.3 million  
26 and according to proof, together with interest thereon according to  
27 proof.

1           2. For punitive damages in excess of \$24,000,000 and  
2 according to proof.

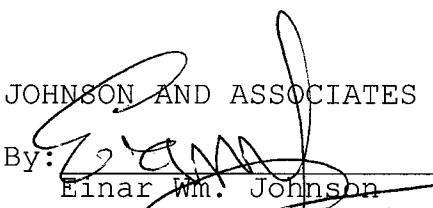
3  
4           **ON ALL CAUSES OF ACTION**  
5

6           1. For costs of suit, including reasonable attorney fees to  
7 any extent allowed by law.

8  
9           2. For such other and further relief as the court deems just  
10 and proper.

11  
12 Dated: December 4, 2008

JOHNSON AND ASSOCIATES

13 By:   
14           Einar Wm. Johnson  
15           Attorneys For Plaintiff  
16           DARTY CRONIN